

MT LEGISLATIVE HISTORY

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Chapter 579 1985

Bill H 791 S _____

Original bill & hist. ____C

H. Committee on Nat. Res

S. Committee on Loc. Gov't.

Hearing Date(s) 2-23 ____C

Hearing Date(s) 3-21 ____C

2-25 ____C

3-23 ____C

____C

3-28 ____C

____C

____C

Date Out 2-25 ____C

3-28 ____C

mt 2-25

mt 3-28

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

HOUSE FINAL STATUS

TRANSMITTED TO SENATE
 3/04 REFERRED TO STATE ADMINISTRATION
 3/25 HEARING
 3/25 COMM REPORT-BILL CONCURRED AS AMENDED
 3/28 2ND READING CONCURRED 48 2
 3/30 3RD READING CONCURRED 46 3

 RETURNED TO HOUSE WITH AMENDMENTS
 4/08 2ND READING AMENDMENTS CONCURRED 95 0
 4/08 ON MOTION RULES SUSPENDED
 PLACED ON 3RD READING THIS DAY
 4/08 3RD READING AMENDMENTS CONCURRED 95 0
 4/15 SIGNED BY SPEAKER
 4/15 SIGNED BY PRESIDENT

 4/17 TRANSMITTED TO GOVERNOR
 4/22 SIGNED BY GOVERNOR
 CHAPTER NUMBER 594 EFFECTIVE DATE: 10/01/85

HB 789 INTRODUCED BY ABRAMS, DONALDSON, ET AL.
 INCREASING CONSERVATION LICENSE BY \$2 TO FUND COUNTY
 WEED CONTROL

2/11 INTRODUCED
 2/11 REFERRED TO FISH & GAME
 2/11 FISCAL NOTE REQUESTED
 2/13 SPECIAL ACTION
 ON MOTION REREFERRED TO AGH
 2/13 REREFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.
 2/15 HEARING
 2/16 FISCAL NOTE RECEIVED
 DIED IN COMMITTEE

HB 790 INTRODUCED BY RAMIREZ
 LOAN GUARANTY AS CONTRACT UPON WHICH WRIT OF
 ATTACHMENT MAY ISSUE

2/11 INTRODUCED
 2/11 REFERRED TO JUDICIARY
 2/20 HEARING
 2/20 COMMITTEE REPORT-BILL DO PASS
 2/22 2ND READING PASS 100 0
 2/23 3RD READING PASS 94 0

TRANSMITTED TO SENATE
 3/04 REFERRED TO JUDICIARY
 3/13 HEARING
 3/13 COMMITTEE REPORT-BILL CONCURRED
 3/16 2ND READING CONCURRED 47 0
 3/19 3RD READING CONCURRED 50 0

RETURNED TO HOUSE
 3/23 SIGNED BY SPEAKER
 3/23 SIGNED BY PRESIDENT

3/25 TRANSMITTED TO GOVERNOR
 3/26 SIGNED BY GOVERNOR
 CHAPTER NUMBER 194 EFFECTIVE DATE: 10/01/85

HB 791 INTRODUCED BY BRANDEWIE

HOUSE FINAL STATUS

REVISING DEFINITION OF SUBDIVISION

2/12	INTRODUCED		
2/12	REFERRED TO NATURAL RESOURCES		
2/23	HEARING		
2/25	COMMITTEE REPORT-BILL DO PASS		
2/27	2ND READING PASS AS AMENDED	57	39
2/27	ON MOTION RULES SUSPENDED		
	PLACED ON 3RD READING THIS DAY		
2/27	3RD READING PASS	65	34
	TRANSMITTED TO SENATE		
3/06	REFERRED TO LOCAL GOVERNMENT		
3/21	HEARING		
3/29	COMM REPORT-BILL CONCURRED AS AMENDED		
3/29	ON MOTION RULES SUSPENDED		
	PLACED ON 3RD READING 70TH DAY		
4/01	2ND READING CONCURRED	39	0
4/01	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	85	12
4/08	ON MOTION RULES SUSPENDED		
	PLACED ON 3RD READING THIS DAY		
4/08	3RD READING AMENDMENTS CONCURRED	84	14
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 579 EFFECTIVE DATE: 10/01/85		

HB 792 INTRODUCED BY GARCIA, J. HAMMOND, ET AL.
PROVIDING FOR APPOINTMENT OF A COORDINATOR FOR
ETHNIC AFFAIRS

2/12	INTRODUCED		
2/12	REFERRED TO STATE ADMINISTRATION		
2/15	HEARING		
2/15	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/19	2ND READING PASS	78	16
2/19	REFERRED TO APPROPRIATIONS		
3/25	HEARING		
4/16	ON MOTION PLACED ON 2ND READING		
4/17	2ND READING PASS	71	22
4/18	3RD READING PASS	74	24
	TRANSMITTED TO SENATE		
4/19	ON MOTION RULES SUSPENDED	36	14
	TO ACCEPT FOR CONSIDERATION		
4/20	REFERRED TO FINANCE & CLAIMS		
4/22	HEARING		
4/22	COMMITTEE REPORT-BILL CONCURRED		
4/24	2ND READING INDEFINITELY POSTPONED	30	19

HB 793 INTRODUCED BY KEENAN, MILES, ET AL.
DEFINING DOMESTIC VIOLENCE AND PERMITTING
WARRANTLESS ARRESTS IN SOME CASES

2/12 INTRODUCED

1 HOUSE BILL NO. 791
2 INTRODUCED BY B. Lewis
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION
5 OF A SUBDIVISION UNDER THE MONTANA SUBDIVISION AND PLATTING
6 ACT; PROVIDING RESTRICTED REVIEW REQUIREMENTS FOR CERTAIN
7 SUBDIVISIONS; AMENDING SECTIONS 76-3-103, 76-3-104,
8 76-3-505, AND 76-3-609, MCA."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 76-3-103, MCA, is amended to read:
12 "76-3-103. Definitions. As used in this chapter,
13 unless the context or subject matter clearly requires
14 otherwise, the following words or phrases shall have the
15 following meanings:

16 (1) "Certificate of survey" means a drawing of a field
17 survey prepared by a registered surveyor for the purpose of
18 disclosing facts pertaining to boundary locations.

19 (2) "Dedication" means the deliberate appropriation of
20 land by an owner for any general and public use, reserving
21 to himself no rights which are incompatible with the full
22 exercise and enjoyment of the public use to which the
23 property has been devoted.

24 (3) "Division of land" means the segregation of one or
25 more parcels of land from a larger tract held in single or

1 undivided ownership by transferring or contracting to
2 transfer title to or possession of a portion of the tract or
3 properly filing a certificate of survey or subdivision plat
4 establishing the identity of the segregated parcels pursuant
5 to this chapter.

6 (4) "Examining land surveyor" means a registered land
7 surveyor duly appointed by the governing body to review
8 surveys and plats submitted for filing.

9 (5) "Governing body" means a board of county
10 commissioners or the governing authority of any city or town
11 organized pursuant to law.

12 (6) "Irregularly shaped tract of land" means a parcel
13 of land other than an aliquot part of the United States
14 government survey section or a United States government lot,
15 the boundaries or areas of which cannot be determined
16 without a survey or trigonometric calculation.

17 (7) "Occasional sale" means one sale of a division of
18 land within any 12-month period.

19 (8) "Planned unit development" means a land
20 development project consisting of residential clusters,
21 industrial parks, shopping centers, office building parks,
22 or any combination thereof which comprises a planned mixture
23 of land uses built in a prearranged relationship to each
24 other and having open space and community facilities in
25 common ownership or use.

(9) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(10) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(11) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant thereto.

(12) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, chapter 67) to practice surveying in the state of Montana.

(13) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, chapter 67) to practice engineering in the state of Montana.

(14) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so

divided which creates:

(a) one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes; and

(b) two or more additional parcels, regardless of size, which are contiguous, connected by a common road or road system, or connected by a common sewer or water system.

Section 2. Section 76-3-104, MCA, is amended to read:

"76-3-104. What constitutes subdivision. A subdivision shall comprise only those parcels less-than-20-acres meeting the definition of "subdivision" in 76-3-103 which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not."

Section 3. Section 76-3-505, MCA, is amended to read:

"76-3-505. Provision for summary review of minor certain subdivisions. (1) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or

playgrounds, and which have been approved by the department of health and environmental sciences where such approval is required by part 1 of chapter 4; provided that reasonable local regulations may contain additional requirements for summary approval.

(2) Local subdivision regulations must include procedures for review of those subdivisions consisting exclusively of parcels 20 acres or larger subject to this chapter. Rules governing review of these subdivisions shall be limited to a written determination of whether appropriate access and easements are properly provided."

Section 4. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor certain subdivisions. (1) Subdivisions containing five or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

††(a) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof.

†2(b) The governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

†3(c) The requirements for holding a public hearing and preparing an environmental assessment shall not apply to the first such subdivision created from a tract of record.

†4(d) Subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section.

(2) For subdivisions consisting exclusively of parcels 20 acres and larger, the governing body shall approve, conditionally approve, or disapprove the subdivision within 35 days of the submission of an application for approval. The governing body's review and approval must be limited to a written determination that appropriate access and easements are properly provided. Requirements for holding a public hearing, preparing an environmental assessment, and finding that the subdivision is in the public interest do not apply."

-End-

STATUS SHEET

49TH

LEGISLATIVE SESSION

COMMITTEE ON NATURAL RESOURCES

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 791	2/12/85	2/23 2/25	2/25	2/25					
HB 827	2/15/85	2/23 2/25	2/25						
HB 846	2/15/85	2/20	2/20	2/20					
HB 859	2/16/85	2/23	2/23			2/23			
HB 860	2/16/85	2/22	2/22			2/23			
HB 891	2/19/85	2/23	2/23			2/23			
HB 892	2/19/85	2/22	3/8			3/8			
HB 899	2/19/85	3/8 3/15 3/18	3/18			3/18			
HB 912	2/20	2/22	2/22			2/22			
HB 913	2/20	2/22	2/22			2/22			

Use a separate sheet for Senate, House Bills, and Resolutions

Rep. Asay asked William Spilker what steps Spilker would recommend to assure that sanitation and water quality can be adequately addressed in the absence of subdivision review. Mr. Spilker said he believed that county health departments have adequate systems to protect municipal water quality under the provisions of the subdivision sanitation act. Water quality and sanitation are not threatened in subdivisions accomplished through exemptions, he said.

Rep. Krueger asked Mr. Spilker if there was any reason other than expense for subdivisions to be excluded from review by local planning agencies. Mr. Spilker said the arbitrary nature of review is a good reason to discard the process.

Rep. Krueger then asked why 20 five-acre plats should come under review, but 20 20-acre plats should not. Mr. Spilker said that the impact of the smaller plats would be much greater than the impact of the subdivision of larger plats, and therefore should come under review.

Rep. Grady asked Mr. Spilker why realtors support a move back to the 5-acre review standard, and Spilker told the committee that the 20-acre standard was a bad move in the state's land use planning. Most buyers, he said, don't want or need a twenty acre plat. He maintained that if the state allowed subdivision into five acre parcels, subdivisions would be smaller.

There were no further questions, and Rep. Lory closed by saying that the amendments proposed by the realtors effectively gut the bill. He reminded the committee that the final draft of the Environmental Quality Council report on subdivisions in Montana notes that the subdivision and platting act is not working as it should to encourage orderly development. HB 827 is the solution to that problem, he said.

HOUSE BILL 791: Rep. Ray Brandewie, of District 49, introduced HB 791, which he sponsored. Rep. Brandewie distributed a handout comparing the types of filed land divisions in Lake County from 1973 to 1984, which he said demonstrates the problems caused by the 20-acre standard. A copy of that information is attached as Exhibit 35. HB 791 provides a new definition of subdivision, he said, which adds language stating that a subdivision is also defined as two or more additional parcels, regardless of size, which are contiguous, connected by a common road or road system, or connected by a common sewer or water system.

Rep. Brandewie also said his bill addresses the issue of adequate roads within subdivisions and the review necessary to make sure those roads are planned.

Jerry Sorenson, from the Lake County planning office, said the definition of subdivision in HB 791 is a "tremendous improvement" over the current statutory definition, and said that HB 791 would result in a better process of review than now exists.

Terry Carmody, representing the Montana Association of Realtors, said he supported the intent of HB 791.

Robb McCracken of the Montana Department of Commerce said the 20-acre definition and exemptions have been a big problem for local governments, and endorsed the definition of subdivision stated in HB 791.

Jim Richard of the Montana Association of Planners said he supported HB 791, and added that he doubted the seriousness of the issue of cost of subdivision review. Proper review does not add much to the front end cost, he said, and the long-term savings far outweigh the costs of proper planning.

There were no opponents to HB 791.

Rep. Brandewie closed by saying that Montana subdivision laws have serious flaws, but HB 791 is a step forward toward solving those problems.

HOUSE BILL 768: HB 768 was introduced by the sponsor, Rep. Dorothy Bradley, District 79. She explained that the safe drinking water act and the sanitation and subdivision act occasionally overlap in some areas of subdivision review. HB 768 would eliminate that overlap by exempting apartments and other portions of buildings that are rented or leased from review as subdivisions, and exempting some subdivisions that will be served by municipal water and sewage facilities from department review.

Some rules covering condominiums indicate that those developments may have to go through review twice, and HB 768, with amendments suggested by Rep. Bradley, would avoid that double-bind. She said the bill would make the sanitation and review process, which is unduly complicated, easier to comply with.

Terry Carmody told the committee that the Montana Association of Realtors supports HB 768.

Jim Richard rose in support of HB 768 for the Montana Association of Planners.

Gerald Ditto told the committee that Montana's professional surveyors support the bill.

William Spilker told the committee that as a real estate broker, he supports Hb 768.

Steve Pilcher, representing the state water quality bureau, said that agency supports HB 768 because it simplifies the subdivision process without frustrating the intent of regulation.

There were no opponents to the bill, and no questions from committee. Rep. Bradley closed by urging a do pass vote.

EXECUTIVE ACTION:

HOUSE BILL 768: Rep. Addy moved DO PASS on HB 768. Rep. Asay moved the amendments provided by Rep. Bradley, which were unanimously approved. Rep. Addy's motion was approved, with Rep. Garcia voting against it.

HOUSE BILL 791: Rep. Kadas moved DO PASS on HB 791. Rep. Asay moved the amendments suggested by Terry Carmody. Rep. Miles suggested that the committee discuss the definitions of subdivision as provided in HB 791 and HB 827. Rep. Kadas withdrew his motion so that the committee could consider the definitions and act on both bills at a later date.

HOUSE BILL 891: Rep. Addy moved DO PASS. Rep. Addy moved that the bill be amended to insert "owner or" on page 9, line 13, following "the." That amendment was unanimously approved. Rep. Kadas moved to amend the bill by inserting on page 9, line 14, following "shall," the language "be notified by the seller by certified mail and shall". That amendment was approved unanimously. Rep. Addy moved to strike section 5 in its entirety, which was approved unanimously. Rep. Addy moved to strike "and persons in possession" on page 1, lines 19-20, which was approved unanimously.

Rep. Addy then made a substitute motion of DO PASS AS AMENDED, which passed unanimously.

HOUSE BILL 859: Rep. O'Hara moved DO PASS. Rep. O'Hara then moved the amendments proposed by the department of natural resources and conservation, which were unanimously approved. The committee then unanimously approved Rep. O'Hara's DO PASS AS AMENDED motion.

HOUSE BILL 312: Rep. Raney moved DO NOT PASS on HB 312. Rep. Krueger made a substitute motion to table the bill. Rep. Iverson explained that John Shontz, a major proponent of the bill, had indicated that there were problems with the measure, and that it should be held until after transmittal. The committee unanimously voted to table HB 312.

Lewis and Clark Area wide Planning Organization

EXHIBIT 20
2/23/85



City-County Building
316 N. Park
P.O. Box 1725
Helena, Montana 59624
406-442-9920 Ext. 374

Gustav A. Byrom III, Director

File: 1010 827&791.HB

February 22, 1985

TESTIMONY

HB 827 and HB 791

At the present time, the Subdivision and Platting Act permits property to be divided without review through the use of exemptions. These exemptions include the occasional sales and gifts to family members.

From June 1, 1984 to January 1, 1985, outside the Helena city limits in Lewis and Clark County, 123 new lots were created by exemptions and were not reviewed. Thirty of these new lots were created using the occasional sale exemption; eleven new lots were created as gifts to family members. The remaining 82 tracts that were created were each larger than 20 acres in size.

During this same time period, the Areawide Planning Organization has reviewed seven subdivision applications. These seven subdivisions have created 19 additional lots. Fourteen new lots were located in the City of Helena. The remaining five new lots were located in Lewis and Clark County outside the Helena city limits.

These figures indicate that of the total 128 newly created lots located in Lewis and Clark County and outside the Helena city limits, less than three percent of the new lots were reviewed. Ninety-seven percent of the land divisions that occurred during this recent six-month period did not take into account concern for the health, safety, and general welfare of the public.

In regard to the occasional sale exemptions:

At the present time in Lewis and Clark County, some very serious problems are occurring in the south hills adjacent to the Helena city limits. Properties originally divided into 20-acre tracts are being further subdivided by using the occasional sale exemptions. The resulting problems are related to the steep topography and the effects that development has upon drainage; topography and the subsequent difficulty in locating a septic system on the property due to bedrock; roads are improperly constructed without any thought for their relationship to the surrounding environment; the individual subdividers have no foresight for how the traffic generated from the newly created lots will merge and connect with the existing county and city streets; no thought is given to fire protection, or the over-all quality of life. And finally, no parkland dedication nor cash-in-

EX. 20
2/2
P.2

lieu of parkland is provided.

To address these cumulative problems in the south hills, a consultant has been hired to determine the solutions, and develop an over-all plan for the south hills. At the present time, it is unknown how costly it will be for Lewis and Clark County and the City of Helena to correct the cumulative problems that have been caused by these individual landowners who have subdivided property (by using the existing exemptions from review).

In addition, the present language of the existing Subdivision and Platten Act is unclear as to how to interpret the 12-month time period. The present language regarding the 12-month period is confusing, resulting in different interpretations which may vary from county to county. HB 827 clarifies the 12-month period.

In regard to the exemptions for gifts to family members:

At the present time in Lewis and Clark County, land divisions often occur as gifts to family members. These properties are frequently further subdivided by utilizing the same exemption and/or by the occasional sale. The present law does not specify any time limit that after a person receives property as a gift before that person can further subdivide the property using the various unreviewed exemptions.

Again, no consideration is given for the cumulative effects of the individual subdivisions, and the need for local services, such as fire protection and schools, and the cost to local governments for those services. Nor is any thought given to the over-all quality of life, which in turn affects property values. And finally, no parkland dedication nor cash-in-lieu of parkland is provided.

In regard to the exemption for parcels over 20 acres in size:

In Lewis and Clark County, substantially large portions of property are originally divided into parcels over 20 acres in size. If the original intent was to provide the individual farmer with a financial option, then that objective is generally not achieved. Entire sections (640 acres) have been subdivided, without review, into 20-acre parcels. Generally, the individuals who have created such subdivisions have not been farmers, but rather large landholders who speculate and subdivide for profit.

The larger parcels are generally located farther from local government service area, which makes it more expensive for local governments for fire protection, sheriff's services, and road maintenance. In addition, subdividing many sections has a cumulative effect on the enrollment capacities of schools. In the Helena Valley of Lewis and Clark County, the 20-acre parcels occur within the boundaries of one school district. In School District #3, one school is filled to capacity. In April, the voters in that school district will decide whether to annex with another district to alleviate overcrowding.

If the additional subdivisions that have been created had been

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2/23/85
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reviewed, then the local governments could have planned ahead for the additional needs for services, such as schools. The subdivider could have shared some of the responsibility for the needs of the future residents of that subdivision. But because the local governments do not have the option for review, the taxpayer bears the financial burden while the individual subdivider has all of the financial benefit. Again, no consideration is given to the over-all quality of life. And finally, no parkland dedication nor cash-in-lieu of parkland is provided.

In short, the individual subdivider thinks of only the benefits to the individual, and not to the consequences that may occur later as a result of the land subdivision. No consideration is given to the quality of life of the future residents of the unreviewed subdivision. In addition, no consideration is given to the quality of life of the persons owning property adjacent the lands subdivided by the individual. And no consideration is given to the integrity of the land. Yet, the cumulative effects of actions taken by many different individuals are serious concerns to local governments that cannot continue to be ignored.

Local government is responsible for the health, safety, and general welfare of its citizens. This responsibility for the public includes addressing the following concerns:

health concerns that relate to water and air quality, noise, and general quality of life;

public safety concerns that relate to the construction and alignment of roads, and fire protection, natural hazards such as parcels located within floodplains and close to earthquake faults;

general welfare concerns that relate to drainage and environmental impacts and constraints, access, availability of utilities, the effects on agriculture, and the effects on local services.

Recognizing the local government's responsibility for the health, safety, and general welfare of its citizens, the 1983 Lewis and Clark County Comprehensive Plan has identified the following goals (page 7):

General Goal -- "To promote orderly development in Lewis and Clark County"

Land Use Goals -- "To promote proper land use planning"

-- "To provide an effective road network"

-- "To promote...the preservation of agricultural lands"

The Lewis and Clark County Comprehensive Plan also identifies various public health and safety goals (including a goal to

adequately provide services) which are generally considered during the review of land subdivisions.

How can the goals of a County's Comprehensive Plan be implemented if unreviewed land divisions are permitted by various exemptions? How can local governments effectively plan their needs for future services when unreviewed subdivisions are permitted? The present Subdivision and Platting Act does not provide authority for local governments to enact its responsibility for the health, safety, and general welfare of its public! To not have the reviewing authority for land divisions that occur within the local government's jurisdiction is the ultimate paradox!

HB 827 and HB 791 will give the local governments the needed authority for subdivision review that they presently do not have. Permitting review of subdivisions that are presently exempted will enable local governments to provide for the health, safety, and general welfare of its citizens in a more effective manner.

The AREAWIDE PLANNING ORGANIZATION supports HB 827 and HB 791, and asks that your approve these bills.

Sincerely,

Kathy Macefield

Kathy Macefield, Planner
AREAWIDE PLANNING ORGANIZATION

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 25, 1985

The meeting of the House Natural Resources Committee was called to order by Chairman Dennis Iverson at 12:05 p.m. in Room 312-1 of the State Capitol.

ROLL CALL: All members of the committee were present.

EXECUTIVE ACTION

HOUSE BILL 827: Rep. Kadas moved DO PASS on HB 827, which was heard on February 23. Rep. Miles moved the amendments to HB 827 which were proposed by Rep. Lory. The amendments, she said, incorporated Rep. Brandewie's definition of subdivision into the language of HB 827. She said the amendments also resolved the "family conveyance issue" by clarifying survey guidelines and exceptions, allaying the concern that expensive surveys would be required. The Lory amendments were unanimously approved.

Rep. Asay spoke against the bill, saying HB 827 is "nothing more than just another infringement" on the rights of property owners. Current subdivision regulations are unworkable because people don't want and cannot use twenty acres, he said.

Rep. Miles said HB 827 is necessary because it deals with issues of sanitation and health, and insures that all plats of subdivided land are salable.

Rep. Kadas moved DO PASS AS AMENDED, which received a tie vote, and the bill left committee without recommendation.

HOUSE BILL 791: Rep. Kadas moved DO PASS on HB 791, Rep. Brandewie's subdivision bill, which was heard in committee on February 23. The motion passed with Reps. Moore and Cobb voting no.

HOUSE BILL 516: Rep. Cobb moved DO PASS AS AMENDED on HB 516, which passed unanimously.

There being no further business before the committee, the meeting was adjourned at 12:20 p.m.


Rep. DENNIS IVERSON, Chairman

STANDING COMMITTEE REPORT

SENATE February 25 19 85

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE Bill No. 791

FIRST reading copy (WHITE)
color

AN ACT REVISING THE DEFINITION OF A SUBDIVISION UNDER THE
MONTANA SUBDIVISION AND PLATTING ACT

Respectfully report as follows: That HOUSE Bill No. 791

DO PASS

CHAIRMAN--FULLER, DAVE
NORMAL SCHEDULE==> SITE: ROOM 405

DAYS: TU-TH-SAT

TIME: 12:30-2:30 P.M.

SECRETARY-GHILARDI, CHERYL

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0612	2/15	3/26		TABLED		
ADDY, KELLY			INCREASED ASSESSMENT OPTIONS FOR SPECIAL IMPROVEMENT DISTRICTS			
HB0653	2/22	3/14		CONCUR		3/14
HAMMOND, JOE			INCREASING SALARIES OF COMMISSIONERS IN SMALLER COUNTIES			
HB0654	2/22	3/23		CONCUR		3/23
PAVLOVICH, ROBERT J. (BOB)			ALLOCATE CERTAIN MOTOR VEHICLE OPERATION FINES TO SHERIFF			
HB0673	2/21	3/19	3/21 3/23 3/28	CONCUR AS AMENDED		3/28
KADAS, MIKE			ADVANCING TIME FOR TESTING LOCAL PETITION VALIDITY IN COURT			
HB0683	2/16	3/28		CONCUR		3/28
CONNELLY, MARY ELLEN			COUNTY PARK BOARD - COUNTY ORDINANCE FOR RULE ENFORCEMENT AND PARK WARDEN			
HB0687	2/22	3/28		CONCUR		3/28
FRITZ, HARRY			COUNTY AND MUNICIPAL FINANCE RECORDS RETENTION SCHEDULES			
HB0727	2/22	3/19		CONCUR AS AMENDED		3/19
HANSEN, STELLA JEAN			RULEMAKING AUTHORITY OF LOCAL HEALTH BOARDS RE: SEWER SYSTEMS			
HB0736	2/22	3/26	3/28	ADVERSE REPORT		3/28
LORY, EARL C.			SECURITY FOR REVOLVING FUNDS FOR IMPROVEMENT DISTRICTS			
HB0746	2/22	3/16		CONCUR		3/16
O'CONNELL, HELEN G.			WATER METER SIZE RATIOS AS ASSESSMENT OPTION FOR FIRE HYDRANT DISTRICTS			
HB0768	3/05	3/21		CONCUR		3/21
BRADLEY, DOROTHY			EXEMPT CERTAIN CONDOMINIUMS FROM SUBDIVISION REVIEW			
HB0791	3/06	3/21	3/23 3/28	CONCUR AS AMENDED		3/28
BRANDEWIE, RAY			REVISING DEFINITION OF SUBDIVISION			

March 21, 1985

FURTHER CONSIDERATION OF HOUSE BILL 673: Karen Renne explained proposed amendments to the bill. They are attached as Exhibit A to these minutes.

Senator Mohar expressed concern about the "ten working days" in the bill. He wondered how this would be handled in cases where a county commission only meets once or twice a month.

Senator Harding expressed concern with suing an appointed election administrator. Karen Renne will research these concerns.

Senator Mohar moved the proposed amendments be adopted. The motion passed unanimously.

CONSIDERATION OF HOUSE BILL 791: Representative Ray Brandewie, District #49, is the sponsor of this bill. The bill was introduced to provide restricted review requirements for minor subdivisions and other divisions of land.

PROPONENTS

Mike Money, President of the Montana Association of Planners, spoke in favor of the bill. He said this bill would address one of the major problems with the Subdivision and Platting Act. He said local governments are required to service these large tracts of land even though they have no access roads. He said the bill would guarantee that land can be developed to the potential it was sold for. He submitted a letter of support from Earl Best, Gallatin County Surveyor. It is attached as Exhibit B to these minutes.

Jerry Sorenson, Planning Director for Lake County, spoke in favor of the bill. His written testimony is attached as Exhibit C to these minutes. He submitted letters of support from the Lake County Commissioners and Rick Smith, a Polson Century 21 Broker. They are attached as Exhibits D and E to these minutes respectively.

Rose Leavitt, representing the Montana League of Women Voters, spoke in favor of the bill. Her written testimony is attached as Exhibit F to these minutes.

Rod McCracken, representing the Department of Commerce and the Governor's Task Force on Infrastructure, spoke in favor of the bill. He said the Governor's Task Force on Infrastructure recognizes that the Subdivision and Platting Act should be changed to ensure that public health and safety be protected.

Bill Spilker, a Helena resident, spoke in favor of the bill. He said he recognizes the need for access but has trouble with the term "appropriate access and easements." He feels some counties could interpret this to mean you have to put in a paved road which is not necessary. The wording could lead to arbitrary administrative decisions for local governments.

March 21, 1985

Terry Carmody, Montana Association of Realtors, stated his support of the bill.

Riley Johnson, representing the Montana Homebuilders' Association, stated his support of the bill. He said he also has concerns about the lack of direction to local governments on interpretation.

Jim Richard, representing the Montana Association of Planners, stated his support of the bill.

Don Reed, representing the Montana Environmental Association, stated his support of the bill.

A letter of support was submitted by the Lewis and Clark County Commissioners. It is attached as Exhibit G.

OPPONENTS

Robert Custer, representing the Montana Association of Registered Land Surveyors, spoke in opposition to the bill. He said he supports the concept of the bill but is also concerned with the term "appropriate and proper." He said he is afraid that people would have to pay a lot of money for plans and specifications.

Julie Hacker, representing the Missoula County Freeholders Association, spoke in opposition to the bill. Her written testimony is attached as Exhibit H to these minutes.

Chairman Fuller opened the hearing for Committee questions.

Senator Crippen asked Mr. Money how he would define "proper and appropriate." Mr. Money said he would agree to have the bill amended to define these terms.

Senator Story expressed concern that they would be reviewing places such as mountain cabins and divided ranches for access. Mr. Richard said there is an agricultural exemption in the Subdivision and Platting Act. Senator McCallum said he felt this should be spelled out in the bill. He also said he feels there are too many regulations and requirements put on subdivisions and occasional sales.

The hearing was closed on HB 791.

CONSIDERATION OF HOUSE BILL 516: Representative Kerry Keyser, District #74, is the sponsor of this bill. The bill was introduced to provide that local governing bodies and the Department of Health and Environmental Sciences may apply only those rules in effect at the time a subdivision application is submitted for review.

LOCAL GOVERNMENT COMMITTEE
MARCH 21, 1985
EXHIBIT B

Mike Momen - HB 791

306 Lindley Place
Bozeman, Mt. 59715
March 20, 1985

Dear Montana Legislators:

I write this letter to offer my support for House Bill #791. I have been a registered land surveyor for many years, and have practiced both in the public and private sectors. Therefore, I feel I am qualified to comment on the practical and sensible provisions contained within House Bill #791.

All parcels of land, whether created through the subdivision process or through the use of the exemptions, need to have direct and safe access to a public or private road. The obvious reasons for this need are police and fire protection; but other reasons also exist, such as resale value of property, future liability, maintenance, and future owners' rights to maintain use. All too often these needs are overlooked until it is time to resell the property or a tragic accident happens.

In relation to utility easements, it is only logical to provide corridors for the needed extension of electricity, telephone, natural gas, etc. If a corridor is not made available, I question how the property may be developed to the potential it was originally created and sold for.

Thank you for the opportunity to express the reasoning for my support for House Bill #791.

Sincerely,

Earl R. Best - Reg # 779ES
Earl Best

TESTIMONY SUPPORTING H.B. 791

by: Jerry Sorensen, Planning Director, Lake County.

I support the above bill, especially for reasons that it will enhance public safety. The predominant growth trend in the last decade in Lake County was rural homesite development (42% rural vs. 10% town). Much of this began with 20 acre tracts, which were subsequently divided into smaller tracts. In many cases the road access is either too narrow, too steep, poorly defined, or poorly constructed. Rural volunteer fire departments are obligated to protect these homes, and in many cases it will be difficult to get equipment to them because of road conditions. This is true of other emergency services such as the sheriff or ambulance. Another related problem is that some of these large tract developments are in forested areas. In the event of forest fire, it will be difficult for people to escape and fire equipment to enter on the same poor road. This sort of calamity almost occurred at the Red Owl fire in the Swan Valley last year. In light of this concern, it seems reasonable that an adequate road should be part of any development.

The major objection I've heard concerning this bill is that it gives local government the authority to determine the type of access. Montana is a diverse state in respect to landscapes, growth pressures, and community attitudes. It would be impractical to develop a statewide road standard for rural roads that fit all cases. I feel that the legislature should have confidence in local government and give them the flexibility to determine what is needed based on the situation. I have worked for local government for 8 years and it is my experience that elected officials are very receptive to public opinion. If people have problems with the way this bill is administered, they have open access to local government and can work to change it.

Thank you and I urge your support for this bill.

LAKE COUNTY, MONTANA

COUNTY COMMISSIONERS

DON CORRIGAN

Polson

HAROLD FITZNER

St. Ignatius

MIKE W. HUTCHIN

Polson

TREASURER

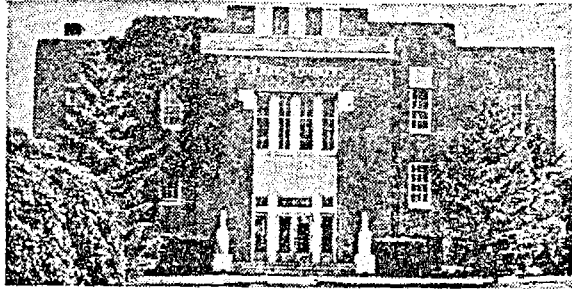
MARJORIE D. KNAUS

CLERK AND RECORDER

ETHEL M. HARDING

ASSESSOR

WILL TIDDY



SHERIFF AND CORONER

GLENN FRAME

CLERK OF COURT

KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS

GLENNADENE FERRELL

COUNTY ATTORNEY

JOHN FREDERICK

JUSTICE OF THE PEACE

CHARLES C. MEYER

Ronan

COUNTY SURVEYOR

POLSON, MONTANA 59860

March 20, 1985

Senator David Fuller, Chairman
Senate Local Government Committee
Capitol Station
Helena, Mt. 59620

LOCAL GOVERNMENT COMMITTEE

MARCH 21, 1985

EXHIBIT D

Re: H.B. 791

Dear Senator Fuller,

The Board of Lake County Commissioners has reviewed H.B. 791. This bill would provide local government minimum review authority over land divisions consisting of parcels 20 acres or larger. The review would be limited to the provision of adequate road access and utility easements.

Over the last 10 years approximately 8,500 acres of land was divided in Lake County into parcels of 20 to 40 acres in size. This accounted for 52% of the subdivisions in our county. We have seen problems with the roads that serve these tracts which include: inadequate right-of-way and driving width, poor surface material, non-existent drainage, steep grades, weed proliferation from ground disturbance, and no coordination of road patterns when the tracts are further subdivided (which is often the case).

There are benefits to the developer, consumer, and general public if access and utility easements are reviewed by the county. It gives us the opportunity to plan for coordination and extensions of road systems and utility services. We can also help assure that the roads are adequate to provide reasonable access for emergency services, especially fire protection. And finally, local review provides a forum for the county to work with the developer. We have qualified and experienced road department and planning personnel who can give advise to the developer on proper location and design. The result can be better quality development which benefits everyone.

H.B. 791 is a positive step in enhancing good development and we urge your support for this bill.

Sincerely,

Board of Lake County Commissioners

Mike Hutchin
Mike Hutchin

Chairman

Harold Fitzner
Harold Fitzner

Member

Don Peterson
Don Peterson

Member

MH/HF/DP/rh

cc: Senator Ethel Harding

LOCAL GOVERNMENT COMMITTEE
MARCH 21, 1985
EXHIBIT E

March 20, 1985

Senator David Fuller Chairman
Senate Local Government Committee
Capitol Station
Helena, Mt.

Dear Senator Fuller:

As a real estate broker in Montana I am very concerned about having a quality product to sell.

HB 791 states that access must be approved to a parcel of land that has been divided off to sell. This bill will protect the public when purchasing land. A law such as HB 791 is important especially in Montana with our vast land and many roads that are neither state or county.

I support HB 791 and urge your committee to also.

Sincerely yours,



Ric Smith
Broker Associate
Century 21 Big Sky Real Estate
P.O. Box 1037
Polson, Mt. 59860

11002.1111100

Testimony — HP 791

Presented by Lee Leavitt

LOCAL GOVERNMENT COMMITTEE
MARCH 21, 1985
EXHIBIT F

The League of Women Voters of Montana supports HB 791. When a series of parcels 20 acres or more in size are created without providing for appropriate access and easements, complicated problems arise for the buyers of these parcels and for the local governments to whom they turn for help. It is entirely reasonable that these problems be addressed before the land divisions are filed at the county courthouse.

While we support this bill the League regrets that the legislature has so far not seen fit to correct some of the many other difficulties created by the Subdivision and Platting Act. The use of such exemptions as the occasional sale, gift to family members and mortgage release to create multiple land divisions is a serious problem. In western Montana the majority of land splits are exempt from subdivision review. Lack of review is allowing many poorly planned developments to proliferate and will ultimately result in higher costs to local taxpayers

(over)

We support HB 791 in so far as it goes and urge that attention be given to these other serious problems. Thank you for this opportunity to comment.

LWV of Mt



City County Building
P.O. Box 1724
316 North Park
Helena, Montana 59624
Telephone 406/443-1010

LEWIS AND CLARK COUNTY

Board of County Commissioners

File: 1010 HB791.M20
March 20, 1985

TESTIMONY HB 791

At the present time, the Subdivision and Platting Act permits property to be divided through the use of various exemptions. The present law does not provide a review provision to assure that each newly created parcel has direct access, nor easements to assure that some access is provided.

Without such a provision to review for access, roads are often improperly constructed without any thought for their relationship to the surrounding environment. Frequently, individual subdividers have no foresight for how the traffic generated from the newly created lots will merge and connect with the existing county and city streets. In addition, parcels may be created that are completely landlocked and have no access to them.

Local government is responsible for the health, safety, and general welfare of its citizens. This responsibility for the public includes addressing the following concerns:

- A. Public safety concerns that relate to the construction and alignment of roads;
- B. General welfare concerns that relate to access and their environmental impacts.

Recognizing the local government's responsibility for the health, safety, and general welfare of its citizens, the 1983 Lewis and Clark County Comprehensive Plan has identified the following Land Use Goal (page 7):

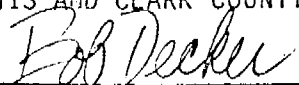
"To provide an effective road network"

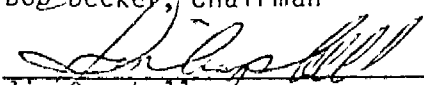
If local governments could review lots created by exemption to assure that access is adequately provided, then a county such as Lewis and Clark County would have a means to implement its goal to provide an effective road network. However, the present law does not provide for such a review option to the local governments. HB 791 would provide such a review option for access to the local governments.

The LEWIS AND CLARK COUNTY COMMISSIONERS support HB 791, and asks your favorable consideration of this bill.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
LEWIS AND CLARK COUNTY


Bob Decker, Chairman


Jim Campbell

not available for signature
Linda Stoll-Anderson

March 23, 1985

Representative Hart said the Board of Crime Control had questioned whether the term "out of state" needed to be specifically included in the bill. Karen Renne will check into this.

The hearing was closed on HB 900.

ACTION TAKEN ON HOUSE BILL 890: Senator McCallum moved that HB 890 BE NOT CONCURRED IN. The motion passed unanimously. Senator McCallum will carry the Adverse Committee Report.

ACTION TAKEN ON HOUSE BILL 516: Senator Story moved that HB 516 BE CONCURRED IN. The motion passed unanimously. Senator Story will carry the bill.

ACTION TAKEN ON HOUSE BILL 519: Senator Regan moved that HB 519 BE CONCURRED IN. The motion passed with Senator Crippen voting no. Senator Regan will carry the bill.

FURTHER CONSIDERATION OF HOUSE BILL 673: Karen Renne explained the proposed amendments to the bill. They are attached as Exhibit B to these minutes. Amendments one and two were previously adopted by the Committee.

Senator McCallum moved that HB 673 BE NOT CONCURRED IN. The motion failed with Senators McCallum, Hirsch, and Story voting yes and Senators Fuller, Harding, Eck, Mohar, and Regan voting no.

Senator Mohar moved that the proposed amendments to the bill (three through six) be adopted. The motion passed unanimously.

Senator Eck moved that "ten working days" be changed to read "fourteen days". The motion passed unanimously.

Chairman Fuller said the bill would be held until the full Committee was present for the vote.

FURTHER CONSIDERATION OF HOUSE BILL 791: Karen Renne explained the proposed amendments to the bill. They are attached as Exhibit C to these minutes.

Senator Mohar expressed concern that if the intended use was for vehicle access, the local government would still be able to make a determination as to what kind of road they want put in, i.e., gravel or paved.

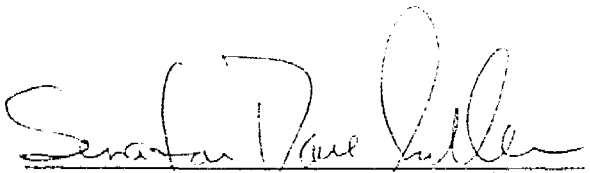
Senator Story said he feels if land is never intended for vehicular use, the local government should not be required to provide any services to that land.

Local Government Committee
Page Four

March 23, 1985

Chairman Fuller suggested the people who want changes in the bill draft proposed amendments and bring them to the next meeting.

The meeting adjourned at 2:05 p.m.


Senator Dave Fuller, Chairman

LOCAL GOVERNMENT COMMITTEE
MARCH 23, 1985
EXHIBIT C

PROPOSED AMENDMENTS TO HOUSE BILL 791
(suggested by the Montana Association of Planners and
revised by researcher)

1. Page 5, line 12.
Following: "determination"
Strike: "of whether appropriate access and"
Insert: "that utility"
Following: "easements"
Insert: "and access appropriate for the intended use"
2. Page 5, line 13.
Following: "are"
Strike: "properly"
3. Page 6, line 16.
Following: "that"
Strike: "appropriate access and"
Insert: "utility"
Following: "easements"
Insert: "and access appropriate for the intended use"
4. Page 6, line 17.
Following: line 16
Strike: "properly"

March 28, 1985

ACTION TAKEN ON HOUSE BILL 673: Senator Mohar moved that HB 673 as amended BE CONCURRED IN. The motion passed with Senators Fuller, Harding, Eck, Mohar, Regan, Pinsoneault, and Crippen voting yes and Senators McCallum, Hirsch, and Story voting no. Senator Mohar will carry the bill.

ACTION TAKEN ON HOUSE BILL 791: Senator Story explained his proposed amendments to the bill. They are attached as Exhibit D to these minutes.

Senators Mohar and Harding expressed concern that the copy of the determination of the review be reflected on the certificate of survey or deed of conveyance. Karen Renne will put this language in the proposed amendments.

Senator Story moved that the proposed amendments be adopted. The motion passed unanimously.

Senator Mohar expressed concern with the additional burden that would be put on counties. Senator Harding said it would not be as much of a burden as they have in reviewing plats under twenty acres.

Senator Harding moved that HB 791 as amended BE CONCURRED IN. The motion passed with Senators Mohar and Crippen voting no. Senator Harding will carry the bill.

ACTION TAKEN ON HOUSE BILL 736: Senator Hirsch moved that HB 736 BE NOT CONCURRED IN.

Senator Eck spoke against the motion, saying she feels the bill gives counties a lot of flexibility.

Senator Hirsch's motion passed with Senators Mohar, Story, Crippen, McCallum, Hirsch, and Harding voting yes and Senators Regan, Eck, and Fuller voting no. Senator Crippen will carry the Adverse Committee Report.

ACTION TAKEN ON HOUSE BILL 612: Senator Regan moved that HB 612 BE TABLED. The motion passed unanimously.

ACTION TAKEN ON HOUSE BILL 885: Senator Mohar moved that HB 885 be amended to reduce the figure of "one half" to "one third." The motion passed unanimously.

Senator Crippen moved that Section 42 of the bill be stricken. The motion passed with Senator Eck voting no.

Senator Crippen moved that Subsection (e) on Page 12 be stricken to coordinate with striking Section 42. The motion passed unanimously.

STANDING COMMITTEE REPORT

Page 1 of 2

MARCH 28

19 95

MR. PRESIDENT

LOCAL GOVERNMENT

We, your committee on.....

HOUSE BILL

having had under consideration.....

No. 791

THIRD

reading copy (BLUE)
color

REVISING DEFINITION OF SUBDIVISION

HOUSE BILL

791

Respectfully report as follows: That.....

No.....

1. Page 6, line 10.

Following: "(2)"

Insert: "(3)"

2. Page 6, line 12.

Following: "shall"

Strike: "approve, conditionally approve, or disapprove"

Insert: "review"

3. Page 6, line 14.

Following: "for"

Strike: "approval"

Insert: "review"

4. Page 6, line 15.

Following: "review"

Strike: "and approval"

5. Page 6, line 17.

Following: "provided."

Insert: "The review shall provide either:

(i) that the access and easements are suitable for the purposes of providing appropriate services to the land; or

(ii) that the access and easements are not suitable for the purposes of providing appropriate services to the land, in which case the county, the school district or districts, and other authorities and districts in which the land is located will not provide services that involve use of the unsuitable access and easements. Such services include:

(A) fire protection;

(B) school bussing;

(C) ambulance;

(D) snow removal; and

(E) similar services as determined by the governing

body.

(continued)

Chairman.

March 29, 1905

(b) The governing body shall deliver a copy of the determination of the review to the county clerk and recorder to be reflected on the certificate of survey or deed of conveyance of the land that was subject to review.

(c) The governing body may, upon application by a landowner, redetermine the suitability of access and easements. If the governing body determines that there has been a material change regarding access or easements and the change provides for suitable access and easements for services, it may determine that such land is now suitable as provided in subsection (1)(a)(i) and shall deliver a copy of such determination to the county clerk and recorder to be reflected on the certificate of survey or deed of conveyance.

(d) *

PC3H2791.641

AND AS AMENDED

BE CONCURRED IN

Senator Dave Fuller, Chairman